BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

TERRILL EDWARDS	)	
Claimant	)	
VS.	)	
	)	Docket No. 244,923
FOSS MOTOR COMPANY, INC.	)	
Respondent	)	
AND	)	
	)	
UNIVERSAL UNDERWRITERS GROUP	)	
Insurance Carrier	)	

ORDER

Respondent appeals the Order of Administrative Law Judge Pamela J. Fuller, dated August 20, 1999, which denied claimant temporary total disability benefits but granted medical treatment for alleged injuries occurring on October 24, 1994, and October 16, 1995.

ISSUES

Did claimant comply with the requirements of K.S.A. 1998 Supp. 44-534 in filing his application for hearing within three years of the date of accident or two years of the last date of compensation?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds as follows:

Claimant suffered accidental injury to his back on October 24, 1994, and this accident is not in dispute. The parties acknowledge claimant was off work for approximately six months receiving authorized medical treatment. Claimant returned to work with restrictions of no lifting over 50 pounds and no extended bending, squatting or crawling. Claimant was a mechanic for Foss Motor Company at that time.

On October 16, 1995, claimant again experienced pain in his back and was off work for approximately one week. The incident was again reported to respondent, and medical treatment was provided. Claimant was treated by Dr. David Edwards and Dr. Raymundo Villanueva. Dr. Villanueva released claimant from his care, and it is agreed by the parties

that claimant's last authorized treatment was April 15, 1996. Claimant returned to Foss Motor Company, but was placed in a different position as a service advisor. Approximately one year later, claimant was promoted to service manager and occupies that position today.

The parties acknowledge respondent filed an accident report for the October 24, 1994, incident. It is also acknowledged no accident report was filed for the October 16, 1995, incident.

K.S.A. 44-557 makes it the duty of every employer to make a report to the Director of Workers Compensation of any accident, claimed or alleged, of which the employer or the employer's supervisor has knowledge within 28 days after the receipt of such knowledge. K.S.A. 44-557(c) states:

> No limitation of time in the workers compensation act shall begin to run unless a report of the accident as provided in this section has been filed at the office of the director if the injured employee has given notice of accident as provided by K.S.A. 44-520 and amendments thereto, except that any proceeding for compensation for any such injury or death, where report of the accident has not been filed, must be commenced by filing an application with the director within one year from the date of the accident, suspension of payment of disability compensation, the date of the last medical treatment authorized by the employer, or the death of such employee referred to in K.S.A. 44-520a and amendments thereto.

The dispute centers around whether the accident report filed for the October 1994 incident satisfies the requirements of K.S.A. 44-557 for the 1995 accident as well.

K.S.A. 1998 Supp. 44-534(b) states:

> No proceeding for compensation shall be maintained under the workers compensation act unless an application for a hearing is on file in the office of the director within three years of the date of the accident or within two years of the date of the last payment of compensation, whichever is later.

If claimant's injury of October 16, 1995, is merely a natural and probable consequence of the 1994 accident, then the accident report of 1994 would satisfy the requirements of K.S.A. 44-557. If, however, the accident of October 16, 1995, is a new and distinct accident, necessitating a separate accident report by respondent, then respondent's failure to file an accident report would toll the running of the statute of limitations until such time as an accident report was properly filed by the employer. *See also* Childress v. Childress Painting Co., 226 Kan. 251, 597 P.2d 637 (1979).

Understandably, respondent argues that the evidence supports its positions that this is merely a reasonable and natural consequence of the original accident. Claimant, on the other hand, argues that this is a new injury, necessitating a new accident report. The only medical evidence in the record is the August 12, 1999, report from Dr. Lawrence A. Vierra, who examined claimant's low back beginning September 2, 1998. Dr. Vierra did have the opportunity to review the medical reports of Dr. Edwards. In Dr. Edwards' history is contained the following quote: "Pain in back. Reoccurring at work doing heavy lifting." Claimant's activities as a service manager included bending, lifting, prolonged sitting and prolonged standing. Claimant testified that his symptoms have progressively worsened over time, especially during the course of working nine-and-a-half-hour days, with the symptoms spreading into his low back, both buttocks and both lower extremities.

Dr. Vierra opined that, as of the time of his examination, claimant was a surgical candidate with specific recommendations for a percutaneous decompression at L5-S1 and an annuloplasty. Dr. Vierra testified that, in his opinion, claimant's back condition progressively worsened and has been aggravated by his continuous work activities as respondent's service manager. This medical evidence is uncontradicted, and the Appeals Board finds it to be credible. Therefore, the Appeals Board finds that claimant did suffer a separate accidental injury on October 16, 1995, for which a separate accident report would be required. Respondent's failure to file the accident report for the October 1995 date of accident tolls the running of the statute of limitations under K.S.A. 1998 Supp. 44-534, and claimant's E-1 filed June 11, 1999, is timely.

Pursuant to K.S.A. 1998 Supp. 44-534a, these findings are not binding in a full hearing on the claim, but are subject to a full presentation of the facts at a later time.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Pamela J. Fuller dated August 20, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1999.

BOARD MEMBER

c: Scott J. Mann, Hutchinson, KS
R. Todd King, Wichita, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director